

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

WINONA FOODS, INC.
1552 Lineville Road
Green Bay, WI 54313,

Plaintiff,

Civil Action No. _____

v.

TIMOTHY J. KENNEDY, INC. d/b/a.
KENNEDY LOGISTICS & WAREHOUSE
8 Greenwood Avenue
Romeoville, IL 60446,

Defendant.

COMPLAINT

COMES NOW, the Plaintiff, Winona Foods, Inc., by its attorneys, Liebmann, Conway, Olejniczak & Jerry, S.C. and as and for its Complaint against the above-named Defendant, alleges and shows to the Court as follows:

PARTIES

1. The Plaintiff, Winona Foods, Inc. ("Winona"), a corporation in the business of dairy manufacture and supply, is organized and exists under the laws of the state of Wisconsin, with its principal place of business being located at 1552 Lineville Road, Green Bay, WI 54313.
2. The Defendant, Timothy J. Kennedy, Inc. d/b/a Kennedy Logistics & Warehouse, Inc. ("Kennedy Logistics"), a motor carrier engaged in interstate commerce, authorized by the Federal Motor Carrier Safety Administration ("FMCSA") to transport property throughout the 48 contiguous United States, has its principal place of business located at 8 Greenwood Avenue, Romeoville, Illinois, 60446, with its registered agent being Timothy J. Kennedy.

JURISDICTION

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.A. § 1337, as this action involves the liability of a motor carrier under 49 U.S.C.A. § 14706 and the amount in controversy exceeds \$10,000.00, exclusive of interest and costs.

4. Venue in this district is proper under 28 U.S.C. § 1391(b) & (c) and 28 U.S.C. § 14706(d).

FACTS

5. On or around June 18, 2007, Kennedy Logistics picked up certain cheese products manufactured by Winona (the "Product") for purposes of transporting the Product on behalf of Winona to a company named Real Mex located in California.

6. Prior to pick-up, Kennedy Logistics was made expressly aware of the fact that the Product had to remain at all times throughout the duration of the transport in a refrigerated trailer that was not to exceed 38 degrees Fahrenheit. Attached hereto as Exhibit "A" is a true and accurate copy of the bill of lading expressly mandating transport in a refrigerated trailer that was not to exceed 38 degrees Fahrenheit.

7. On or around June 22, 2007, the Product transported by Kennedy Logistics sustained loss or damage while in transit; specifically, the Product arrived at Real Mex warm, wet, and melted inside cartons that were misshapen and bloated due to the fact that the temperature of the trailer upon arrival measured at 70 degrees Fahrenheit.

8. The Product was tendered to Kennedy Logistics in good order and condition.

9. Kennedy Logistics failed to deliver the Product in good order and condition at the agreed upon destination, in breach of the contract of carriage for shipment of the Product.

10. As a result of Kennedy Logistics' breach of the contract of carriage, Winona has sustained actual damages in an amount equal to \$67,759.70.

11. Winona duly filed, in writing, a notice of claim with Kennedy Logistics on June 25, 2007 for its loss/damages and demanded payment thereof. Attached hereto as Exhibit "B" is a true and accurate copy of Winona's Notice of Loss/Damage Claim and demand for payment.

12. Kennedy Logistics failed to acknowledge some or all of Winona's claims as required by 49 C.F.R. § 370.5.

COUNT I – 49 U.S.C.A. § 14706

13. Winona repeats and realleges each and every allegation of Paragraphs 1-12 as if fully set forth herein.

14. As a result of its conduct and actions, Kennedy Logistics is liable to Winona for its full, actual damages as a motor carrier under 49 U.S.C.A. § 14706.

15. Accordingly, Kennedy Logistics is liable to Winona for its actual damages in an amount equal to \$67,759.70, together with interest thereon from the date that the Product was delivered or scheduled to be delivered, as well as all foreseeable consequential and incidental damages Winona suffered based upon the special circumstances surrounding the Product's transport.

COUNT II – 49 U.S.C.A. § 14704

16. Winona repeats and realleges each and every allegation of Paragraphs 1-15 as if fully set forth herein.

17. Kennedy Logistics' failure to deliver the Product in good order and condition constitutes a violation of 49 U.S.C.A. § 14706.

18. Kennedy Logistics' failure to acknowledge some or all of Winona's claims as required under statute constitutes a violation of 49 C.F.R. § 370.5.

19. Pursuant to the Interstate Commerce Act, defendants are "liable for damages sustained by a person as a result of an act or omission of that carrier . . . in violation [49 U.S.C.A., Subtitle IV, Part B]."

20. As a result of Kennedy Logistics' breach of the contract of carriage, under 49 U.S.C.A. § 14706, and Kennedy Logistics' violation of the federal claim regulations at 49 C.F.R. pt. 370, Kennedy Logistics is liable, under 49 U.S.C.A. § 14704(a)(2), for Winona's actual damages in an amount equal to \$67,759.70, together with interest thereon from the date that the Product was delivered or scheduled to be delivered, as well as all foreseeable consequential and incidental damages Winona suffered based upon the special circumstances surrounding the Product's transport.

21. As a result of Kennedy Logistics' breach of the contract of carriage, under 49 U.S.C.A. § 14706, and Kennedy Logistics' violation of the federal claim regulations at 49 C.F.R. pt. 370, Winona is entitled to an award of reasonable attorney's fees under 49 U.S.C.A. § 14704(e).

WHEREFORE, Winona demands judgment against Kennedy Logistics as follows:

A. An award of Winona's actual costs in an amount equal to \$67,759.70, together with prejudgment and post-judgment interest;

B. An award to Winona for all foreseeable consequential and incidental damages Winona suffered based upon the special circumstances surrounding the Product's transport;

C. An award to Winona for its reasonable attorney's fees as authorized by statute, as well as the costs associated with bringing this matter; and

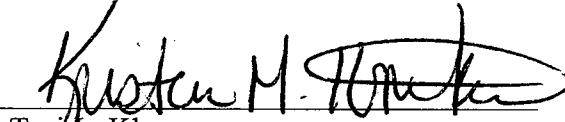
D. Such other relief as this Court or a jury may determine to be proper and just.

Jury Demand

A trial by jury is hereby demanded on all issues triable to a jury in this case.

Respectfully submitted 13 day of November, 2007.

By: _____



Tori L. Kluess

Kristen M. Hooker

LIEBMANN, CONWAY, OLEJNICZAK, & JERRY, S.C.

231 South Adams Street

Green Bay, WI 54301

P. O. Box 23200

Green Bay, WI 54305-3200

Attorneys for Plaintiff, Winona Foods, Inc.

#247398

RX Date/Time
07/31/2007

07/31/2007
Case 1:08-cv-01376

09:52
Document 1

7145218674
REAL MEX FOODS

Filed 11/13/2007
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P.002
PAGE 02/02

KENNEDY LOGISTICS

AND WAREHOUSE

8 Greenwood Ave.
Romeoville, IL 60446

815-372-9898

06/19/07

115020

GN-20070614-6

7- 95586-

CARRIER:	PALLETS IN:	PALLETS OUT:

C
O
N
S
I
G
N
E
E

REAL MEX FOODS
7150 VILLAGE DRIVE

BUENA PARK, CA 90621
714-523-0031

S
H
I
P
P
E
R

BATTAGLIA DISTRIBUTING CO.
2545 S. ASHLAND AVE.

CHICAGO, IL 60608

NO. PIECES	DESCRIPTION OF ARTICLES	WEIGHT
24	SKIDS, CHEESE	4000
576CS	Temp 35 DELY APPT 6/22 @ 1200	
	SEAL# INTACT (INITIAL UPON DELIVERY)	
	Tractor # 100 Trailer # 284140	
	<div>576CS I DELY ONLY 576 BTNS EX-8 PLS 6/22/07 6/25/07 576-6-2207 1423 6-25-07 Total 999</div> <div>RECEIVED JUN 25 2007 BY: Raymond * Received Product 70°F 1st DELY MAKE ON FR 6/22/07 REFERR SA SA rec. 1423 CASES 6-25-07</div> <div>025462 HOLD PER [Signature]</div>	

Per HUEVELMAN, RICHARD Date X

ANY EXCEPTIONS MUST BE REPORTED AT
TIME OF DELIVERY - CALL 800-323-3734

RECEIVED BY CONSIGNEE

EXHIBIT

A

LIEBMAN, CONWAY, OLEJNICZAK & JERRY, S.C.

A Wisconsin Service Corporation
ATTORNEYS & COUNSELORS AT LAW
 231 South Adams Street
 Green Bay, Wisconsin 54301
 P.O. Box 23200
 Green Bay, WI 54305-3200

FILE COPY

HERBERT C. LIEBMAN, III
 GREGORY B. CONWAY
 THOMAS M. OLEJNICZAK
 FREDERICK L. SCHMIDT
 R. GEORGE BURNETT
 GREGORY A. GROBE
 TORI L. KLUSS
 ROBERT M. CHARLES
 BRUCK N. MURPHY
 TONY A. KORDUS
 JODI L. ARNDT
 MICHELE M. MCKINNON
 DAVID H. WEBER
 KRISTEN M. HOOKER
 DAVID L. LASEE
 PATRICK M. BLANEY
 ROSS W. TOWNSEND
 DAWN M. KORVER
 JOSEPH W. LAFRAMBOISE
 T. WICKHAM SCHMIDT

OF COUNSEL:
 J. MICHAEL JERRY

August 9, 2007

TELEPHONE: (920) 437-0476

FACSIMILE: (920) 437-2868

DMK@lcojlaw.com

www.lcojlaw.com

Lloyds of London
 c/o Mr. Jeff Inman
 Criterion Claim Solutions
 P.O. Box 247049
 Omaha, NE 68124-7049

Re: **Loss/Damage Claim for Damaged Cheese Delivery on 6/22/07**
 Insured: **Kennedy Logistics & Warehouse**

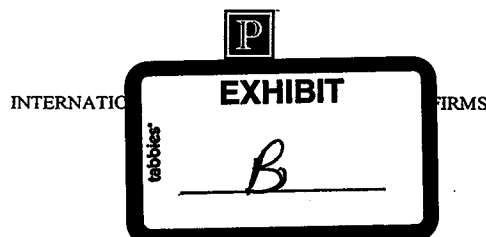
Dear Mr. Inman:

We represent Winona Foods, Inc. In that capacity, the above-referenced claim has been turned over to us for pending legal action. Please forward this correspondence to Lloyds of London and provide the undersigned with Lloyd's contact information and claim number for this claim.

As you know, on June 22, 2007, Kennedy Logistics & Warehouse, your insured, delivered heat-damaged cheese to Real Mex Foods. Upon delivery, the truck box temperature was 70 degrees (well above the 35 degrees contracted for), cartons were misshapen because of condensation, and bags of product were bloated - all indications of transport at an improperly high temperature. Investigation showed that the refrigeration unit on the truck was not operating, and that the truck driver had to use injector cleaner and make numerous attempts at repair.

Real Mex determined that none of the product was acceptable and rejected the shipment. Despite prompt reporting by Winona Foods, Kennedy Logistics has been very unresponsive to this incident, including waiting a whole week to report the incident to its insurer. Due to this lack of response from Kennedy Logistics, Winona Foods is presently incurring storage charges for the product.

Winona Foods promptly submitted a claim to your company on June 25, 2007, for the amount of \$91,992.00, with storage charges to be determined and added at a later date. Enclosed is a copy of both the claim form and the detailed loss amount.



LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.

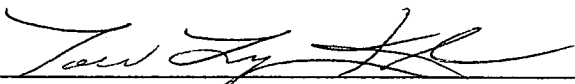
August 9, 2007

Page 2

To date, Winona Foods has had no response to its claim, and has therefore referred the matter to our firm. We sincerely hope to resolve this promptly and amicably, but it has now been more than six weeks since the loss. If we do not hear from you within seven (7) days, we will initiate legal proceedings. Thank you for your anticipated prompt response.

Very truly yours,

LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.

By: 
Tori Lynne Kluess

DMK: dmk

Enclosures

Cc: Winona Foods, Inc.

#211918

Loss/Damage Claim

Carrier Information		Claimant's Information	
Name: Kennedy Logistics & Warehouse		Name: Winona	
Address: 8 Greenwood Ave.		Address: 1552 Lineville Rd	
Address 2:		Address 2:	
City/State/Zip: Romeoville IL 60446		City/State/Zip: Green Bay WI 54313	
Phone:		Contact: Dave Meyer	
FAC:		Phone: 920-662-2184	
Other Info: (Pro#BOL#Vehicle#)		Fax: 920-662-2193	

Claim Information			
Claim \$ amount:		Claim For: <input checked="" type="checkbox"/> Shortage <input checked="" type="checkbox"/> Damage <input type="checkbox"/> Other (specify)	
Pickup Date: 6-18-07		Delivery Date: 6-22-07	
Shipper: Battaglia Distribution		Consignee: Real Mex Foods	
Origin: 2345 S. Ashland Ave Chicago IL		Destination: 7150 Village Dr Buena Park CA	
Pro#/Trailer#		PO# or Ref#	
Trailer # KNTZ 284140		79373	
Briefly Describe what the claim represents: Product Received at 70° degree F. Bags of product were bloated. Cartons showed signs of condensation weakening due due to rise in temperature. Storage claim is due to carrier's refusal to move rejected product.			
Determination of how the claim amount was calculated			
Quantity	Item	Cost/unit	Total Amount
2000	Mont Jack Feather Shred	2.295/lb	\$ 91,800.00
24	Pallets	8.00/ea	\$ 192.00
	Storage	TBD	
Supporting Documents: <input checked="" type="checkbox"/> Bill of Lading <input type="checkbox"/> Freight Bill <input type="checkbox"/> Freight Invoice <input checked="" type="checkbox"/> Inspection Report <input checked="" type="checkbox"/> Photographs <input type="checkbox"/> Other (specify)			
If the claim involves damaged goods, please check one or more of the following:			
<input checked="" type="checkbox"/>	Damaged goods can be repaired for approximately \$ 91,992.00		
<input type="checkbox"/>	Damaged goods can be used "as is" for an allowance of \$		
<input checked="" type="checkbox"/>	Damaged goods are available for carrier to pickup		
<input type="checkbox"/>	Damaged goods carrier has in their possession - refused at time of delivery		
<input type="checkbox"/>	Damaged goods are unavailable for carrier to pickup (explain)		
<input type="checkbox"/> Freight Bill <input type="checkbox"/> Freight Invoice <input type="checkbox"/> Inspection Report <input type="checkbox"/> Photographs <input type="checkbox"/> Other (specify)			
To avoid delay in processing your claim, please attach the appropriate documentation:			
<input checked="" type="checkbox"/>	Vendor's invoices showing prices of lost or damaged goods (including final page)		
<input checked="" type="checkbox"/>	Consignee's copy of the freight bill bearing loss or damage notations.		
<input type="checkbox"/>	Itemized repair bill, if applicable.		
<input checked="" type="checkbox"/>	Inspection Report, if available.		
<input type="checkbox"/>			
Submitted By:		Date:	

REMIT PAYMENTS TO -

Claim_Form.xls

CIVIL COVER SHEET

The JS -- 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Place an X in the appropriate box:

☒ Green Bay Division☐ Milwaukee Division**I.(a) PLAINTIFFS**

Winona Foods, Inc.
1552 Lineville Road
Green Bay, WI 54313

DEFENDANTS

Timothy J. Kennedy, Inc., d/b/a
Kennedy Logistics & Warehouse
8 Greenwood Avenue
Romeoville, IL 60446

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: BROWN
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT WILL
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE
NUMBER)

Liebmann, Conway, Olejniczak & Jerry, S.C.
231 South Adams Street
P.O. Box 23200
Green Bay, WI 54305-3200
(920) 437-0476

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN
ONE BOX ONLY)

- ☐ 1 U.S. Government
Question Plaintiff
Not a Party
- ☒ 3 Federal
(U.S. Government
- ☐ 2 U.S. Government
Defendant
of Parties
- ☐ 4 Diversity
(Indicate Citizenship
in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND
ONE BOX FOR DEFENDANT)

- | DEF | PTF | DEF | PTF |
|---|----------------------------|----------------------------|---|
| Citizen of This State
4 | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place
of Business In This State |
| Citizen of Another State
5 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place
of Business in Another State |
| Citizen or Subject of a
Foreign Country
6 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation
6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	Injury -	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 315 Airplane Product Malpractice	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input checked="" type="checkbox"/> 450 Commerce/ICC
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	Injury -	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans-Excl. Veterans	<input type="checkbox"/> 320 Assault, Libel & Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	Slander	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Satellite TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Federal Employers' Product Liability Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 345 Marine Product Fraud	<input type="checkbox"/> 730 Labor/Mgmt.	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
	Liability	<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 892 Economic
	Lending	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 893 Environmental
	<input type="checkbox"/> 350 Motor Vehicle Personal	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 355 Motor Vehicle Damage			<input type="checkbox"/> 895 Freedom of
	Product Liability			<input type="checkbox"/> 900 Appeal of Fee
	Damage			<input type="checkbox"/> 950 Constitutionality of
	<input type="checkbox"/> 360 Other Personal Injury Liability			<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS		FEDERAL TAX SUITS	

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real

- ☐ 442 Employment
☐ 443 Housing/
☐ 444 Welfare
☐ 445 Amer w/Disabilities -
Employment
☐ 446 Amer w/Disabilities -
Other
☐ 440 Other Civil Rights

- ☐ 510
Motions to
Vacate
Sentenc
e
**HABEAS
CORPUS:**
☐ 530
General
☐ 535 Death
Penalty
☐ 540
Mandamus &
Other
☐ 550 Civil
Rights
☐ 555 Prison
Condition

- ☐ 870 Taxes (U.S. Plaintiff or
☐ 871 IRS - Third Party
26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened another district ☐ 5 Transferred from Litigation ☐ 6 Multidistrict

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

49 U.S.C.A. § 14706 – liability of motor carrier

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23 **DEMAND \$**CHECK YES only if demanded in complaint:
JURY DEMAND: X YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

11/13/07

SIGNATURE OF ATTORNEY OF RECORD



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS — 44

Authority For Civil Cover Sheet

The JS — 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs — Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment)”.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS -- 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section V below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an “X” in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge’s decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an “X” in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS — 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.